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March 15, 2005

29350.91539

VIA ELECTRONIC COMMENT FILING SYSTEM

Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

Re: Objection of Pappas Telecasting of Iowa, L.L.C. to Negotiated Channel
Arrangement Submission by Paxson Des Moines License, Inc.,
File No. BFRECT – 20050210AUC, MB Docket No. 03-15

Dear Madame Secretary:

This law firm represents Pappas Telecasting of Iowa, L.L.C. ("Pappas Telecasting"), which holds a license from the Commission that authorizes Pappas Telecasting to operate analog television broadcasting station KPWB-TV in Ames, Iowa on NTSC Channel 23. Station KPWB-TV bears the Commission's Facility Identification Number 51502.

Pappas Telecasting, through its undersigned counsel and pursuant to the Commission's Public Notice released on March 1, 2005 (DA 05-519),¹ hereby objects to the Negotiated Channel Arrangement Submission (the "NCA Submission") filed with the Commission in File No. BFRECT – 20050210AUC by Paxson Des Moines License, Inc. ("Paxson"), the licensee of television broadcast station KFPX, operating on NTSC Channel 39 in Newton, Iowa. In the NCA Submission, Paxson has indicated that it has entered into a negotiated channel arrangement ("NCA") with the licensees of several (if not all) of the other television stations in the Des Moines, Iowa market – including Pappas Telecasting – that contemplates KFPX's use of digital Channel 29 after the transition from analog to digital operations.²

Pappas Telecasting objects to the NCA Submission on several grounds. First, Pappas Telecasting denies that an NCA exists between Pappas Telecasting and Paxson. Pappas

¹ Public Notice, *DTV Channel Election Issues – Proposed Negotiated Channel Election Arrangements and Procedures for Filing Associated Pleadings*, DA 05-519 (March 1, 2005) ("Public Notice").

² See File No. BFRECT – 20050210AUC.

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Telecasting has no current intention to, and has not had in the past any intention to, enter into an NCA with any other licensee in KPWB-TV's market, including Paxson.

Second, Pappas Telecasting does not believe that Paxson made a serious, good-faith effort to advise Pappas Telecasting of Paxson's desire to enter into an NCA with Pappas that would contemplate KFPX's use of digital Channel 29. Paxson claims to have sent a letter dated January 13, 2005 to Station KPWB-TV's Local Sales Manager David Presler (the "Letter") informing Pappas Telecasting of Paxson's intention to elect Channel 29 for KFPX's final DTV operating channel, as well as requesting that Pappas Telecasting indicate its assent or objection to the proposed channel election on a form attached to the Letter by January 24, 2005.³ The Letter also stated that Paxson would consider any lack of action on the part of Pappas Telecasting by such date to indicate assent to the channel election.⁴

Pappas Telecasting never received the Letter (other than as explained in Footnote 3). Attached hereto as Attachment B is the Declaration of David Presler (the "Declaration"), in which he states that he never received the Letter and that he would not be the proper contact at Pappas Telecasting to receive such a letter because his responsibilities do not involve channel election issues. A more appropriate recipient would have been KPWB-TV's General Manager or Chief Engineer, who would be more familiar with such channel election issues. By sending the Letter to Mr. Presler, a Pappas Telecasting sales manager who obviously would have no channel election responsibilities, as well as presuming Pappas Telecasting's lack of action by the self-imposed deadline to indicate assent to the proposed KFPX channel election, Paxson could represent to the Commission that Pappas Telecasting had acquiesced to the proposed channel election, when in fact Pappas Telecasting had no opportunity to consider the matter until Pappas Telecasting learned about Paxson's NCA Submission from the Commission's March 1, 2005 Public Notice.⁵

If there are any questions regarding this objection, please do not hesitate to contact Pappas Telecasting's undersigned counsel.

³ See Letter dated January 13, 2005 from William L. Watson, Secretary of Paxson, to David Presler. A copy of the Letter is attached hereto as Attachment A and was obtained on March 8, 2005 from Mr. Watson by the undersigned counsel for Pappas Telecasting upon request, after the January 24, 2005 deadline unilaterally set by Paxson.

⁴ See *id.*

⁵ Public Notice, *supra* n.1. Furthermore, were Paxson able to secure digital Channel 29 at this time, it would, in effect, have secured a "paired" DTV channel for which it is currently not allotted for use prior to final transition to DTV operation.

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Very truly yours,


W. Ray Rutnganlug
for PAUL HASTINGS JANOFSKY & WALKER, LLP

Attachments

cc: Nazifa Sawez, Federal Communications Commission, with attachments (by hand delivery)
Paxson Des Moines License, Inc. (KFPX), with attachments (by overnight courier)
Capital Communications Company (WOI-TV), with attachments (by overnight courier)
Des Moines Hearst-Argyle TV, Inc. (KCCI), with attachments (by overnight courier)
Iowa Public Broadcasting Board (KDIN-TV), with attachments (by overnight courier)
Iowa Public Broadcasting Board (KTIN), with attachments (by overnight courier)
Iowa Public Broadcasting Board (KRIN), with attachments (by overnight courier)
Iowa Public Broadcasting Board (KBIN-TV), with attachments (by overnight courier)
The New York Times Management Services (WHO-TV), with attachments (by overnight courier)
KDSM Licensee, LLC (KDSM-TV), with attachments (by overnight courier)
Second Generation of Iowa (KFXA), with attachments (by overnight courier)
KCWE-TV, Inc. (KCWE), with attachments (by overnight courier)

ATTACHMENT A

COPY

January 13, 2005

VIA FEDERAL EXPRESS

Mr. David Presler
Regional Sales Manager
KPWB-TV
2701 S. E. Convenience Road
Suite 1 Ankeny, IA 50021-9433

Re: KFPX-DT Channel Election

Dear Mr. Presler:

As you may know, Paxson Des Moines License, Inc. ("Paxson") is the FCC licensee of station KFPX(TV) (Newton, Iowa). KFPX(TV) broadcasts on NTSC Channel 39 but was not assigned a paired DTV channel. In the present round of the channel election process, Paxson wishes to elect Channel 29 for post-transition operation of the station. Election of an unassigned channel at this stage is permissible only pursuant to a negotiated channel arrangement. For KFPX(TV), Paxson does not seek use of a channel assigned to a local station. The FCC has said it will review the station's election for anti-competitive effects.

Accordingly, we hereby request that if you have an objection to KFPX(TV)'s election of Channel 29, please notify the undersigned using the attached form and returning it to me by fax or e-mail at your earliest convenience – but no later than Monday, January 24, 2005. Conversely, if you have no objection, we would appreciate it if you could memorialize this by indicating so on the enclosed form and returning it to me. Alternatively, you may take no action and we will presume there is no objection.

If you have any questions or concerns, please feel free to contact me. Thank you for your consideration.

Sincerely,



William L. Watson
Secretary

Acknowledgement of Channel Election

KFPX (TV) broadcasts on NTSC Channel 39 but was not assigned a paired DTV channel. Paxson believes post-transition operation of KFPX(TV) on Channel 29 will be aggregately preferable in terms of impact on other television stations. Election of an unassigned channel at this stage is permissible only pursuant to a negotiated channel arrangement. Because Paxson wishes to elect a channel unassigned to a local station, it does not anticipate this arrangement to have anti-competitive effects, but the FCC has said it will review stations' elections for such effects. Accordingly, by signing below, [CALL SIGN] hereby acknowledges the foregoing and confirms the following:

- ☐ [CALL SIGN] has no objection to the election of Channel 29 by KFPX(TV).
- ☐ [CALL SIGN] objects to the election of Channel 29 by KFPX(TV) for the following reasons:

This acknowledgement is effective as of the date hereof.

Signature

Name (please print)

Title (please print)

Date

DCLIB02:1437730-1

1-529 P.03/12 F-968

MAR-08-05 12:11PM FROM-

ATTACHMENT B

DECLARATION

My name is David Presler. I am the Local Sales Manager for Station KPWB-TV, Ames, Iowa, FCC Facility ID No. 51502, operating on NTSC Channel 23, the licensee of which is Pappas Telecasting of Iowa, L.L.C. I hereby declare, under penalty of perjury, that:

1. I have been the Local Sales Manager for Station KPWB-TV for one year. As Local Sales Manager, my duties have involved production of advertising revenue for Station KPWB-TV and management of the station's eight-person sales and support staff. My duties also include inventory control, development of revenue projects, and sales budget management. However, my duties have not included the negotiation of digital television station channel election arrangements with other television stations;
2. Due to the nature of my responsibilities with KPWB-TV, I would not expect to be the recipient of a channel election inquiry from another broadcast station in the market;
3. I did not receive the January 13, 2005 letter from William L. Watson, Secretary of Paxson Des Moines License, Inc., licensee of station KFPX (TV), Newton, Iowa, which contained a channel election inquiry and a request that Station KPWB-TV indicate by January 24, 2005 its consent or objection to Station KFPX (TV)'s election to use Channel 29;
4. The facts stated herein are true and correct to the best of my information, knowledge, and belief. Executed on March 14, 2005.



David Presler
Local Sales Manager
KPWB-TV